

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Adopted Rules Governing
the Siting Certain Landfills Initially Permitted
After January 1, 2011, *Minnesota Rules*
Chapter 6301

**REPORT OF THE CHIEF
ADMINISTRATIVE LAW JUDGE
UNDER MINN. R. 1400.2300**

This matter came before the Chief Administrative Law Judge pursuant to the provisions of Minn. R. 1400.2300, subpart 8.

The Pollution Control Agency seeks to adopt the above-entitled rules pursuant to Minn. Stat. § 14.26.

On January 24, 2012, the Administrative Law Judge issued a Report pursuant to Minn. Stat. § 14.26, subd. 3, in which he disapproved portions of the rules. The Chief Administrative Law Judge agreed with the Administrative Law Judge's determination in a Report issued January 25, 2012. On February 7, 2012, the Department requested that the Chief Administrative Law Judge review modifications to those parts of the rules that had been disapproved.

Based upon a review of the modifications made by the Department as presented in the February 7, 2012 submissions and the entire rulemaking record,

IT IS HEREBY ORDERED THAT: The proposed rules, (Revisor's Draft 4008) are approved as to legality.

Dated: February 16, 2012

s/Raymond R. Krause
RAYMOND R. KRAUSE
Chief Administrative Law Judge

MEMORANDUM

Pursuant to Minn. Stat. § 14.128, an agency that proposes to adopt a new rule must:

determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. An agency must make this determination before the close of the hearing record or before the agency submits the record to the administrative law judge if there is no hearing. The administrative law judge must review and approve or disapprove the agency's determination. 'Local government' means a town, county, or home rule charter or statutory city.

If such an impact is found, the effective date of the proposed rules may, under certain circumstances, be delayed. The delay period gives the Legislature a fair opportunity to review the rules, and the underlying delegation of authority, before the rules become effective. See, Minn. Stat. § 14.128, subds. 2 and 3.

In this instance, the Agency undertook a survey of local land use officials and determined from that survey that each of the local ordinances that would potentially be impacted by the proposed rules, had a "savings clause" which incorporates by reference the latest version of the applicable state rules. Thus, as agency officials explained, "local solid waste ordinances ... automatically incorporate[] any new changes in state requirements into the local ordinance requirements."¹ Likewise important, the agency is not aware of any local ordinance that will require modification as a result of adopting the proposed rules.² Lastly, none of the comments received by the agency during the comment period, including those from local units of government, indicate that modifying local ordinances would be required under the proposed rules.³

Under such circumstances, the agency has satisfied the requirements of Minn. Stat. § 14.128 and the proposed rules should be approved as to legality.

R. R. K.

¹ See, Agency Submission Letter, at 1, OAH Docket No. 8-2200-22054-1 (February 7, 2012).

² See, *id.*

³ See, Agency Submissions, Tab J, OAH Docket No. 8-2200-22054-1 (January 10, 2012).